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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1444th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 9 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial and second periodic reports of Japan (continued) (CERD/C/350/Add.2)

1. At the invitation of the Chairman, the members of the delegation of Japan resumed their places at the Committee table.

2. Mr. ABOUL-NASR inquired why the Japanese authorities had waited over 20 years to ratify the International Convention on the Elimination of All Forms of Racial Discrimination.

3. The CHAIRMAN invited the Japanese delegation to answer all the questions asked by the members of the Committee.

4. Ms. OZAKI (Japan), referring to the participation of non-governmental organizations (NGOs) in the establishment of Japan's report, said that before drafting the report the Japanese Government had organized a meeting attended by the representatives of 10 ministries and 7 NGOs. The points of view of the Government and NGOs did not always converge and the NGOs were not always in agreement with each other, but in any event the Government consulted the NGOs and took account of their comments.

5. In answer to a question on the place of the Convention in the internal legal system, she said that the provisions of international treaties ratified by Japan had the same legal force as domestic legislation. To date, no doubt because the Convention had only recently been ratified, its provisions had not been invoked in the courts. In 1999, however, a district court hearing the case of the expulsion of a Brazilian had referred to the Convention in ruling that the expulsion was illegal and that damages should be paid to the victim. The question as to whether the Convention and other international treaties were directly applicable was settled on a case-by-case basis in the light of the scope of the provisions invoked. The Japanese Government considered that international treaties did not establish the rights of individuals directly but laid down obligations which were binding on the States that had ratified them. In that respect, it observed that article 9 of the Convention required States parties to adopt legislative, judicial, administrative or other measures which gave effect to the provisions of the Convention, but did not consider that the Convention could be directly invoked.

6. With regard to the ethnic make-up of the Japanese population, the Government did not have a statistical breakdown by ethnic origin, but it did have data gleaned from administrative documents. The number of foreigners residing in Japan had increased considerably in recent years. At the end of 1998, about 1.5 million foreigners had been registered with all the municipalities; the largest group had been Koreans (42.2 per cent of the total), followed by Chinese (18 per cent) and Brazilians (14.7 per cent).

7. Several questions had been asked on the Ainu people. According to a 1999 study, 23,760 Ainu were living on Hokkaido Island. That figure corresponded to persons residing on Hokkaido and defined as Ainu for the purpose of the study. It therefore did not

include Ainu not living on Hokkaido and not wishing to be recognized as Ainu. She did not know where the figure of 50,000 Ainu mentioned by Mr. Valencia Rodriguez came from and said that statistics on the topic were inevitably approximate.

8. In terms of the living standard of the Ainu, the report revealed that the ratio of Ainu receiving public assistance as compared to the rest of the population was decreasing. The percentage of Ainu youth going on to high school and post-secondary education was also given in the report. According to the most recent survey on discrimination, conducted in 1993, 12.4 per cent of those surveyed said they had experienced discrimination at school, on the job or in their private lives, and 15.7 per cent said that they knew of someone who had experienced such discrimination. The Constitution guaranteed the same rights for all. To the knowledge of the Japanese Government, there had been no cases in which Ainu movements or traditional activities had been restricted. However, to prevent and eliminate any form of discrimination, the human rights organs of the Ministry of Justice conducted public awareness campaigns to raise awareness of the fundamental rights of the Ainu. A brochure, entitled "The Ainu people and human rights", had been published and the slogan "deepen your understanding of the Ainu people" had been adopted to mark human rights week. Legislation had been adopted on the promotion of Ainu culture and tangible measures had been taken to encourage the development of the Ainu language and culture and to disseminate and promote knowledge of Ainu traditions. A number of events had been organized to that end (radio and television broadcasts, exhibitions, folktale competitions, etc.) and had received financial support from the relevant ministries.

9. The question of whether the Ainu should or should not be considered an indigenous people was a moot point, given that there was as yet no specific international definition of what constituted an indigenous people. In that respect, the law on the promotion of Ainu culture aimed to preserve and encourage Ainu language and culture and to ensure that society as a whole respected the existence of that people, but it did not promote the indigenous character of the Ainu. The living conditions of the Ainu were now much closer to those of the other inhabitants of Hokkaido, but the Government of Hokkaido prefecture was continuing its efforts to improve their living standard by implementing the fourth series of Hokkaido Utari Welfare Measures.

10. A question had been asked on groups of people such as the Nivkh living on Sakhalin Island. She had no details on the matter, but said that the traditions of the Nivkh and other peoples were given prominence in museums of ethnology. In any event, all persons living in Japan had equal rights. The Japanese Government had not ratified ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries because some of its provisions were incompatible with the country's legal system.

11. With regard to immigration, the fact of recognizing the right to free choice of employment and to equal pay for equal work did not mean that the State authorized anyone to enter the country and to engage in any occupation. As stated in paragraph 20 of the report, Japan had adopted a system of residence status as a basic framework for foreigners to enter and stay in Japan. There was no discrimination against foreigners, and a foreigner wishing to change occupation could change residence category. Foreigners had to register with the authorities of the municipality in which they were staying and their status differed depending on their occupation. Foreigners whose status allowed them to work belonged to an occupational

category. For example, the report stated that 91.6 per cent of all "entertainers" were from Asia. The criteria for acceptance of foreign workers in Japan were reviewed in accordance with changes in the economic and social situation. The presence of too many unskilled workers could have serious repercussions on Japanese society and undermine the national social consensus. Rather than accept foreign unskilled workers, the Japanese Government preferred to provide aid to countries - essentially those in the Asian region - which had a surplus of unskilled labour.

12. The Japanese Government was also engaged in the fight against illegal labour, especially since the number of foreign illegal workers was steadily growing. To prevent illegal labour, the authorities concerned, in cooperation with each other, gave guidance to employers, apprehended job brokers and members of organized crime rings and penalized unscrupulous employers who hired illegal workers.

13. With regard to racial discrimination against women, Japan had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985 and had submitted several reports to the Committee monitoring the Convention's application. The Government was taking legislative and other measures to fight trafficking in women and pornography involving women and children and was making a serious effort to fight organized crime at the international level.

14. With regard to the human rights of foreigners in Japan, the services of the ministries concerned and the local authorities provided information in different forms to heighten the public's awareness of respect for the rights of foreigners. If cases arose in which foreigners were discriminated against, the authorities took the necessary measures.

15. Clarifications had been requested on the legal status and treatment of Korean residents. The matter was referred to in paragraphs 32 et seq. of the report and in the comments made at the previous meeting. Special laws governed control of immigrants who had lost Japanese nationality, and since 1991, the year in which a memorandum of understanding had been signed by the foreign ministers of both countries, the representatives of Japan and of the Republic of Korea had met from time to time to solve any problems that arose.

16. Amnesty International's statement on the treatment of foreigners in Japanese detention centres was indeed somewhat alarming, but it had to be emphasized that that NGO did not describe the situation as it was. In fact, everyone, whether Japanese or not, was dealt with according to the appropriate procedure on arrest. There had been no case of arbitrary detention or conviction in Japan. Detainees had sometimes been the victim of violence, but that violence was often a reaction by prison staff to the conduct of the detainees themselves. Disciplinary measures were nevertheless provided for in cases where prison staff members had used excessive and unjustified violence. Moreover, the rules governing the treatment of detainees had been amended in 1998 and there was no longer any reason to speak of discrimination in Japanese prisons.

17. A question had been asked about refugees, in particular those who had arrived from Indo-China since 1978. As stated in paragraph 52 of the report, all refugees were governed by the Immigration Control Act and could claim refugee status. The situation of refugees from

Indo-China was described in detail in paragraphs 54 et seq. of the report. At the end of December 2000, there had been 2,759 asylum-seekers, over 2,000 of whose requests for asylum had been granted.

18. The question had also been raised of compensation for the victims of discriminatory measures or acts. When a person was the victim of discrimination at the hands of a public official acting in the performance of his duties, the local community concerned or the State was obliged to pay compensation. In addition to the measures spelled out in paragraphs 155 et seq. of the report, many offices in charge of legal affairs and the defence of civil liberties in the country frequently coordinated their activities and had thus been able in particular to order the removal of posters calling for the expulsion of a certain foreign community.

19. With regard to the criminalization of discrimination, she recalled and expanded on what was said in paragraphs 146 et seq. of the report, mentioning in particular article 90 of the Civil Code, which provided for compensation for damage caused to the victims of racial discrimination. Moreover, even if the offence of racial discrimination was not stipulated in the Penal Code, a prosecutor could bring criminal proceedings if he considered that an act of racial discrimination constituted a criminal offence. In that respect, the absence of penal provisions criminalizing racial discrimination was in keeping with the principle that had prompted Japan to issue a reservation concerning article 4 of the Convention. Given that the Constitution guaranteed freedom of expression, Japan discharged its obligations under article 4 in general terms, but the application of paragraphs (a) and (b) of that article could lead it to prohibit all sorts of activities and therefore no longer to respect certain constitutional guarantees. The dissemination of racist ideas was punishable only if it infringed on the honour of a person or a group, and there had been no cases of incitement to discrimination in Japan requiring the enactment of legislation that could limit freedom of expression.

20. Questions had been raised about alleged acts of discrimination against Korean children at school. The Committee was assured that, in cooperation with the schools, the authorities concerned were dealing with cases of harassment at school, essentially by educating young people rather than by punishment. There had been three arrests in 1994, and since 1998 the authorities had unfortunately had to deal with six cases of discrimination at school without being able to arrest the wrongdoers.

21. With regard to legislation, the Constitution guaranteed freedom of assembly and freedom of expression, the basis in Japan on which the population took part in political activities and the essential guarantee of rights and freedoms. Legislators had therefore avoided sweeping restrictions that would prevent the exchange of opinions. In Japan, awareness and persuasion were considered preferable to repression. There was no legislative provision specifically prohibiting groups that incited to racial discrimination: it was deemed sufficient to apply existing legislation. With regard to the dissemination of exhortations to discrimination over the Internet, guidelines had been issued to all service providers.

22. As had been pointed out by certain members of the Committee, the constitutional provision concerning the right to vote and to be elected did not apply to foreigners, but could not be said to be discriminatory. Moreover, article 92, paragraph 2, of the Constitution provided that permanent residents could elect local representatives. In 1995 the Supreme Court had ruled that

that provision could not be interpreted as indicating that foreigners had the right to vote, but in October 1998 it had declared that legislation giving the right to vote to permanent residents could be considered and since then proposals had been submitted to that end by several political parties.

23. In answer to questions concerning the right of return, she stated that all Japanese naturally had the right to return to Japan and that any person able to prove that he or she was Japanese was authorized to return under article 63 of the Immigration Control Act. Foreigners living in Japan did not have an automatic right of return once they left the country, as the State could carry out a number of checks before giving its authorization.

24. In reply to questions about discrimination in employment, she stated that labour legislation prohibited all discrimination, in particular with regard to pay or working hours, on the basis of the employee's nationality or opinion. In the event of an infringement, the employer was asked to correct the situation and provide working conditions in keeping with the law, which also applied to foreign workers. There had been specific cases of discriminatory words being spoken on the job and the scope of the Convention had been explained to the wrongdoers so that they would mend their ways.

25. With regard to housing, since 1992 legislation guaranteed that foreigners residing legally in Japan were treated on an equal footing with Japanese with regard to the attribution of public housing, and since then the number of foreigners occupying such units had increased greatly. The matter was therefore not a problem, nor did permanent foreign residents have problems in terms of protection of their social rights, which were the same as for the Japanese and therefore did not require any specific measures.

26. Regarding the application of article 6 of the Convention, in particular the remedies available to foreigners in case of racial discrimination, when persons benefiting from social welfare asked for legal aid, they were exempted from paying the costs incurred. In investigations into human rights violations, the perpetrators often confessed, but since that was not always the case, procedures aimed at making them acknowledge what they had done had been established and would be strengthened.

27. Members of the Committee had asked what was done to familiarize the circles concerned with the content and scope of the Convention. She stated that, for example, the comments made by the Committee after its consideration of the report would be published, including on the Internet. Human rights training, comprising the study of the Convention, was given to judicial staff, police officers and all civil servants.

28. The Committee had pointed out that the case of the Buraku population was not covered in the report. That was because the word "descent", used in article 1, paragraph 1, of the Convention, did not mean the same thing to the authors of the Convention as it did to Japan. For the former, the word covered ethnicity, skin colour and race, but in fact it was not really defined in the Convention and did not cover the social class of the persons concerned. Japan considered that, historically, the Buraku were a class defined by a very specific occupation and governed by a special status, which indeed could be considered as a form of discrimination. The population of Okinawa, for its part, had a very specific culture that had developed on the island over time,

but was Japanese and hence protected like all others by the country's laws and institutions. It was true that the stationing of American armed forces placed a heavy burden on the population, but Japan was endeavouring to lighten that burden by agreeing with the United States on the means of improving relations between the two communities.

29. With regard to the situation of people who had recently returned from China, in particular orphans, those people had been born in China to Japanese parents who had lived there for many years and who therefore were not covered by the Convention. They had been offered compensation on their return and the Government planned to increase the social welfare benefits granted them.

30. She mentioned the matter of the controversial statement of the Governor of Tokyo, specifying, as he himself had indicated during a subsequent press conference, that he had had absolutely no intention of promoting or encouraging racial discrimination but had merely declared that certain foreigners entering Japan illegally were the authors of violent crimes that could sometimes lead to major disturbances. The Governor of Tokyo had subsequently published an article stating that he encouraged all measures allowing for the elimination of discrimination against foreigners and declaring his commitment to human rights.

31. In answer to a question by Mr. Tang concerning a brochure distributed by the Japanese police recommending that anyone suspecting a Chinese person of breaking the law denounce that person immediately to the police, she admitted that the content of the brochure was inappropriate and added that the police had issued a public apology and withdrawn the brochure from circulation. The Government stood ready to give detailed and in-depth instructions to prevent any similar incident in future. She concluded by stating that the Japanese delegation would forward written answers to the Committee on the questions to which it had not been possible to reply, for lack of time, at the current session.

32. Mr. YUTZIS said that the initial report was of a high standard and broached numerous issues of importance to the Committee. With regard to the substance, he stated that article 4 of the Convention was of a mandatory character and that the preventive measures listed in it were of the utmost importance. Both history and social and cultural anthropology had taught that the dissemination of ideas based on racist positions could very rapidly have extremely grave consequences, hence the importance of prevention. In his public statement, the Governor of Tokyo had used very derogatory terms to describe foreigners, which was regrettable, even if Japan was not an isolated case in that respect. The dissemination of racist ideas was one of the chief causes of infringement of freedom of expression and any person infringing on the rights of a group undermined that group's freedom of expression. It was therefore mistaken to claim that taking measures against racist organizations was tantamount to limiting their freedom of expression. The exact opposite was true.

33. On the issue of violence, he was very concerned by paragraph 89 of the State party's report, which read that "no provision exists in Japan under the present legal system that would prohibit specific organizations or activities from promoting racial discrimination or incitement, or which would punish participation in such organizations". That was worrying because it meant that in practice article 4 of the Convention was not respected in Japan. Paragraph 89

continued, "if an organization promoting or inciting racial discrimination engages in violent, destructive activities contrary to the Subversive Activities Prevention Law, in accordance with that Law, under certain conditions, its activities may be restricted, its dissolution ordered, or it or its members punished". The Japanese authorities therefore apparently considered that an act of violence could only concern terrorist activities or physical injury. A text based on non-recognition of other people by their social exclusion could have a far more serious impact than an act of physical violence itself. He asked the delegation to provide further information on that point.

34. With regard to the issue of descent, article 1 of the Convention established that racial discrimination referred to any distinction "based on race, colour, descent or national or ethnic origin", meaning that descent could also be grounds for discrimination and that the State party was obliged to guarantee that there was no discrimination based on descent.

35. Referring to the Convention's effects in internal law, Mr. de GOUTTES noted that the delegation had quite rightly stated that the Convention's provisions were not self-executing in Japanese law. Since national legislation had to be adopted to implement the Convention, it was all the more necessary to enact appropriate legislation to criminalize all acts of racial discrimination, in compliance with articles 4 and 5 and paragraph 1 (c) of article 2 of the Convention.

36. In fighting racial discrimination, it was not enough to mobilize citizens, no matter the extent of that mobilization, and legislation was required both to punish offences and to prevent them. Although there might be no racial discrimination in Japan at present, that did not mean that the phenomenon could not emerge in the future, in particular since, according to the delegation, the number of foreigners entering the country had increased considerably.

37. Furthermore, the debate on the contrast between countries with a monist legal system, in which international treaties and agreement took precedence over domestic legislation as soon as they had been approved, and those with a dualist legal system was perhaps not the most consequential. It was more important to know whether a duly ratified instrument was self-executing. Even in the case of a monist system, any ratified international treaty had to be accompanied by internal legislation defining the sanctions and penalties incurred for any derogation from the obligations arising therefrom. Indeed, since no human rights treaty provided for punishment in the event of non-compliance with its provisions, implementing regulations were absolutely necessary to ensure its application. He therefore recommended that Japan supplement its legislation in order fully to comply with the obligations arising from article 4 of the Convention.

38. Mr. THORNBERRY said that the State party should seriously consider ratifying ILO Convention No. 169, which served as a model for what should be practice in the area of the rights of indigenous peoples. Convention No. 169 contained a clause providing that the Convention should be interpreted in a flexible manner, having regard to the conditions characteristic of each State party. He invited the Japanese Government to familiarize itself with General Recommendation XIII of the Committee on the rights of indigenous peoples.

39. The Japanese delegation had stated that there was no definition in international law of indigenous peoples, but he considered that the State party was not thereby released from its international obligations in that respect, since the existence of those peoples was a matter of fact, no matter how the notion was interpreted. With regard to the comments regarding discrimination against the Buraku on the grounds of their descent, he stated that the expression "racial discrimination" used in article 1 of the Convention covered different categories of discrimination, including that based on descent, in order to cover all cases and to apply to all countries no matter their specific cultural characteristics. In that respect, he drew the Japanese delegation's attention to resolution 2000/4 of the Sub-Commission on the Promotion and Protection of Human Rights, declaring that discrimination based on employment and descent was a form of discrimination prohibited by international human rights standards.

40. Mr. DIACONU endorsed Mr. Thornberry's statement and added that States should not consider indigenous peoples as a source of problems but as a cultural asset to be protected. Furthermore, according to the information provided by the delegation, to be considered discriminatory under the Japanese Civil Code, an act not only had to be discriminatory as such, but also had to run counter to law and order and morality, a condition not mentioned anywhere in the Convention. Given the absence of penal legislation specifically criminalizing the acts covered by article 4 of the Convention, he asked whether the Constitution provided for penalties that would make up for that shortcoming. The State party had a responsibility to fight discrimination and should review its legislative and institutional framework with a view to bringing it in line with the Convention. That task was all the more necessary in that population movements around the globe and demographic change would lead Japanese society to receive a growing number of foreigners in the future.

41. He disagreed with the delegation's position that a declaration under article 14 of the Convention would threaten the independence of the Japanese court system. The procedure for examining communications was not a substitute for national court procedures since it could not be initiated until all internal remedies had been exhausted. Lastly, he invited the Japanese Government to reconsider its position and approve, as soon as possible, the proposed amendment to article 8 of the Convention on the financing of the emoluments of the Committee members, recalling that that amendment had already been approved by the General Assembly.

42. The CHAIRMAN invited the Japanese delegation to respond to the final questions from Committee members.

43. Mr. KATAGIRI (Japan) said that, given the limited time available for his oral presentation on education, the Government would provide detailed written answers to the additional questions raised by Committee members.

44. Mr. SHIBUYA (Japan) said that Japan's reservations to article 4 of the Convention did not mean that in Japan racist behaviour was not penalized by the law. Racially motivated oral or physical violence was punishable under the Penal Code, and, generally speaking, the fact that an act of violence was racially motivated constituted an aggravating circumstance in Japanese penal law. In addition, the propagation of racist ideas and incitement to racial hatred and the creation

of associations promoting such ideas constituted acts of racial discrimination that were subject to penal provisions without those provisions being considered as excessively restricting the freedom of expression guaranteed by the Constitution.

45. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) expressed satisfaction at the frank and constructive dialogue initiated between the Japanese delegation and the Committee and the many replies provided to Committee members' questions. In Japan, the provisions of the Convention took precedence over those of internal law and applied to acts of racial discrimination, even though they were not self-executing. The Committee had nevertheless noted, with regard to article 2 of the Convention, that there was no legislation specifically prohibiting racial discrimination in the State party and had underscored, when considering the application of article 4, the mandatory character of that article. Recalling General Recommendation XV on article 4, according to which the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression, the Committee had asked the State party to withdraw its reservation to article 4. It had also expressed concern at the xenophobic declarations made by the Governor of the city of Tokyo.

46. The Committee had considered the situation of Japan's indigenous peoples, underscoring the importance of recognition of the Ainu as an indigenous people, and had suggested that the State party consider ratifying ILO Convention No. 169. While acknowledging the efforts made by the State party, the Committee had noted the persistence of a discriminatory attitude in Japan towards indigenous peoples, Koreans, foreigners, refugees, illegal immigrant workers, the Buraku and the inhabitants of the island of Okinawa. It had stressed the need for complete statistics on the legal cases concerning minority groups. Lastly, the Committee had expressed the wish that the State party should make a declaration under article 14 of the Convention.

47. Mr. HARAGUCHI (Japan) thanked the Committee and the Rapporteur for their valuable comments on Japan's report. Differences of views had emerged between the Committee and his delegation on certain major issues, but the fruitful dialogue established had provided the delegation with food for thought. He assured the Committee that the Japanese Government would pursue its fight against human rights violations and, in particular, against racial discrimination.

48. The CHAIRMAN regretted the serious time constraints imposed on the Japanese delegation. He nevertheless expressed satisfaction at the establishment of an open and constructive dialogue. He declared that the Committee had completed its consideration of the initial and second periodic reports of Japan.

The meeting rose at 1 p.m.